

## REMARKS

This is intended as a full and complete response to the Office Action dated March 3, 2011, having a shortened statutory period for response extended three months set to expire on September 3, 2011. Claims 1-3 and 8-21 remain pending in the application and are shown above. Claim 7 has been cancelled, and claims 4-6 have been withdrawn. New claims 13-21 have been added. Please reconsider the claims pending in the application for reasons discussed herein.

### Claim Rejections Under 35 U.S.C. § 103

Claims 1-3 and 8-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Herold, et al.* (U.S. 6,803,345). The Examiner states that although Herold does not teach a hydrocarbon oil, it does teach the concentrate contains oil. The Examiner, therefore, argues Examiner suggests Herold suggests the claimed invention.

Herold teaches a herbicide composition in the form of microemulsion-forming-concentrates. (Col. 3, lines 48-50). Herold states "microemulsion" is a solution that contains an oil phase and water. However, there's no evidence that Herold contemplated hydrocarbon oil as a suitable oil phase. Assuming *arguendo* that hydrocarbon oil is considered a subset of oil phase, the Federal Circuit has, on several occasions, stated that "a claimed species or subgenus is encompassed by a prior art genus is not sufficient by itself to establish a *prima facie* case of obviousness. *In re Baird*, 16 F.3d 380, 382, 29 USPQ2d 1550, 1552 (Fed. Cir. 1994) ("The fact that a claimed compound may be encompassed by a disclosed generic formula does not by itself render that compound obvious.")" (MPEP 2144.08). Because a *prima facie* case of obviousness has not been established, Herold does not teach or suggest a hydrocarbon oil. Additionally, Herold fails to teach a dearomatized hydrocarbon oil component. Withdrawal of the rejection is respectfully requested.

Claims 1, 2, and 8-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Mueinghoff* (U.S. 6,156,705). The Examiner states because *Mueinghoff* teaches the concentrate contains oil such as vegetable oil or mineral oil, *Mueinghoff* suggests the concentrate contains hydrocarbon oil.

*Mueinghoff* teaches an adjuvant containing a suitable co-surfactant/solvent selected from a large group of compounds. Examples of these compounds include ethoxylated castor oil, phyto bland mineral oil, vegetable oil such as canola, and soybean oil. However, *Mueinghoff* is silent with respect to hydrocarbon oil. Applicant respectfully requests withdrawal of the rejection.

Claims 1 and 2 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kowalik, et al.*

Claim 1 has been amended to include a hydrocarbon oil and a phosphate ester. *Kowalik* does not teach or suggest a concentrate containing these two components. Withdrawal of the rejection is respectfully requested.

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Elsik, et al.* (USAN 20040142823).

Claim 1 has been amended to include a hydrocarbon oil and a phosphate ester. *Elsik* does not teach or suggest a concentrate containing these two components. Withdrawal of the rejection is respectfully requested.

#### Conclusion

In conclusion, the references cited by the Examiner, alone or in combination, do not teach, show, or suggest the invention as claimed.

Having addressed all issues set out in the office action, Applicant respectfully submits that the claims are in condition for allowance and respectfully requests that the claims be allowed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jason C. Huang", is written over a horizontal line.

Jason C. Huang

Registration No. 46,222

PATTERSON & SHERIDAN, L.L.P.

3040 Post Oak Blvd. Suite 1500

Houston, TX 77056

Telephone: (713) 623-4844

Facsimile: (713) 623-4846

Attorney for Applicant(s)